



CHAPTER 4

Filing Requirements for Personal Service Contracts

“Filing” of personal service contracts is a requirement unique to this type of state contract, and provides the additional executive oversight desired by the Washington State Legislature.

The Washington State Legislature has maintained a continuing interest in personal service contract activities and has passed laws requiring specific oversight and reporting requirements. Therefore, once an agency has made the decision to seek outside consulting assistance, it is advisable to review the current requirements for filing personal service contracts to determine if they apply to the proposed contract or amendment.

Current requirements, as stated in the introduction, *Getting Started*, are set forth in Chapter 39.29 RCW and in the *State Administrative and Accounting Manual*, Chapter 15, issued by the Office of Financial Management.

Agencies subject to the filing requirements include any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, higher education institutions, and correctional institutions. Excluded from the competition and filing requirements of Chapter 39.29 RCW are entities such as the legislative branch of state government, local government, port districts, educational service districts, and other governmental entities that are not listed here.

Categories of contracts and amendments, which require filing with the Office of Financial Management, are discussed in the detail in the following sections of this chapter. For easy reference, two summary charts of filing requirements – one for state agencies and one for institutions of higher education – are included at the end of this chapter.

4.1 What is Contract Filing?

“Filing” for the purposes of this manual means submitting personal service contract information to OFM for OFM “review” and/or “approval” and for public inspection by interested parties. OFM “review” is defined as: OFM reviews the contract and makes recommendations as needed. The agency can sign the contract and the contractor may start work immediately. OFM “approval” is defined as: The contract is subject to the ten working day waiting/filing period. OFM may require changes and may disapprove the contract.

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A contract filing consists of entering pertinent contract data into the OFM Personal Service Contract Database (PSCD) and attaching the contract or amendment. Since June 1, 2003, the PSCD has been the exclusive way to file and report contracts to OFM.

The PSCD is available to authorized state agency users via the statewide intranet at:

<http://contracts.ofm.wa.gov/PSCD/>

PSCD is available to authorized state agency users outside the statewide intranet at:

<https://fortress.wa.gov/ofm/contracts/pscd>

If a state employee needs access to the PSCD, contact the PSCD agency administrator designated by your agency. If you do not know who your administrator is, contact OFM at the PSCD online help phone numbers: (360) 725-5257 or (360) 725-5262, or send an e-mail to: ofm.contracting@ofm.wa.gov

4.1.1 Accessing the PSCD

For information regarding access to the PSCD to file or report a personal service contract or amendment, contact the PSCD Help Desk at (360) 725-5257 or (360) 725-5262.

4.1.2 Copy of the Contract or Amendment

An unsigned certified copy of the contract or amendment is to be submitted as part of the filing in the PSCD. Certified means that the contract or amendment, although unsigned, is a true and final copy of the agreement between the parties. When the filing is submitted, the filed contract or amendment constitutes a certified copy.

Filing an unsigned, certified copy allows the agency to acquire the contractor's signature on the contract or amendment concurrent with OFM processing, which is helpful when contracts or amendments are subject to the 10 working day filing period.

Attachments or exhibits to the contract document should also be included with the contract filing. For example, if the contract was competitively bid, the agency's procurement document and the contractor's successful proposal should also be electronically attached to the filing, if they are incorporated

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as exhibits into the contract. When filing a contract electronically, you may attach the exhibits electronically or if they are only available in hard copy, indicate in the PSCD you are mailing a hard copy.

4.1.3 Documented Justification

Personal service filings must include a comprehensive explanation of the contract purpose, background and procurement. The filing justification must be able to withstand public, legislative, and executive scrutiny. Therefore, it should be prepared as if it were being read by many others outside of your agency, for it will be. Through PSCD, other agencies may also view your processed filings, including the justification and the contract documents.

4.2 General Filing Information

4.2.1 Filing Periods

Three different filing periods currently apply to contracts and amendments filed with OFM, as noted in the following tables.

State Agencies	
Filing Period	Filing Category
Contract is filed with OFM no later than the start date of services.	Competitively solicited contracts of \$20,000 or more and their amendments. [NOTE: Exceptions are competitive contracts, which also fall in the first two bulleted categories in the following box.]
Contract is filed with OFM a minimum of 10 working days prior to the proposed start date of services.	<ul style="list-style-type: none"> Competitive contracts of \$20,000 or more and their amendments for the following, identified by category sub-object: <ul style="list-style-type: none"> * Management consulting - CA * Organizational development - CA * Marketing - CG * Communications - CH * Employee training - CJ * Employee recruiting - CK Amendments to sole source or competitive contracts that result in the contract being greater than 50 percent of the original contract value, or that constitute a substantial change in the scope of work, when those contracts, as amended, are in the amount of \$5,000 or more. All sole source contracts of \$5,000 or more and their amendments.
Contract is filed with OFM within three working days of the start of services or contract execution, whichever is sooner.	<p>Emergency contracts of \$5,000 or more and their amendments.</p> <p>Amendments awarded solely for the purpose of decreasing the total dollar amount of the contract.</p>

Institutions of Higher Education	
Filing Period	Filing Category
Contract is filed with OFM no later than the start date of services.	<p>Competitively solicited contracts of \$20,000 or more, and their amendments, and the contract includes \$20,000 or more in state funds. Also, amendments to these contracts that do not exceed 50% of the original contract amount or do not substantially change the scope of work.</p> <p>[Note: Exceptions are competitive contracts that also fall in the first three bulleted categories in the following box.]</p>
Contract is filed with OFM a minimum of 10 working days prior to the proposed start date of services.	<ul style="list-style-type: none"> Competitive contracts of \$20,000 or more, and their amendments, for the following, identified by category sub-object: <ul style="list-style-type: none"> * Management consulting - CA * Organizational development - CA * Marketing - CG * Communications - CH * Employee training - CJ * Employee recruiting - CK Amendments to sole source or competitive contracts that result in the contract being greater than 50% of the original contract value, when those contracts, as amended, are in the amount of \$5,000 or more. For sole source contracts, must include \$5,000 or more in state funds. Amendments to sole source or competitive contracts that constitute a substantial change in the scope of work, when those contracts, as amended, are in the amount of \$5,000 or more. For sole source contracts, must include \$5,000 or more in state funds. For competitive contracts, must include \$20,000 or more in state funds. All sole source contracts of \$5,000 or more, and their amendments, when the contract includes \$5,000 or more in state funds.
Contract is filed with OFM within three working days of the start of services or contract execution, whichever is sooner.	<p>Emergency contracts of \$5,000 or more, and their amendments, when the contract includes \$5,000 or more in state funds.</p> <p>Amendments awarded solely for the purpose of decreasing the total dollar amount of the contract, if the contract was subject to filing with OFM.</p>

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4.2.1 Filing Periods – *continued*

The term “working days”, for filing purposes, excludes Saturdays, Sundays and state holidays and the date of contract filing.

For contracts subject to the 10 working day filing period, the earliest start date is the tenth working day after, but not including, the date of filing, subject to OFM review or approval. The agency may also start work any time after the tenth working day, subject to OFM review or approval. The contract start date can fall on a weekend or holiday **after** the tenth working day, if the agency desires.

To minimize confusion about the start date of contracts and amendments subject to the 10 working day filing period, the contract or amendment should include the following or a similar provision:

Under the provisions of Chapter 39.29 RCW, this personal service contract/amendment is required to be filed with the Office of Financial Management (OFM). No contract required to be so filed is effective and no work shall commence nor payment made until ten (10) working days following the date of filing, and, if required, until reviewed and/or approved by OFM. In the event OFM fails to approve the contract, the contract shall be null and void.

The filing period provides time for OFM processing, but also provides a public review period. If OFM review or approval is completed prior to the ten-day period, the effective start date remains 10 working days after the filing date.

OFM may adjust the start date beyond the 10 working days from initial contract filing if the filing is incomplete when first submitted and the agency does not respond to OFM’s request for additional information in a timely manner. If the agency provides additional information requested by OFM prior to the end of the 10 working days, an adjustment will not be necessary. **However, it is the agency’s responsibility to verify that OFM approval has been granted prior to starting work.** The PSCD notifies the agency contacts when OFM has completed its contract review.

Competitive contracts or amendments that are not subject to the 10 working day filing period must be filed, but the contract start date may be the working day the contract is filed or date of execution, whichever is later, or any day thereafter.

4.2.2 OFM Processing of Filings

Once the filing is received at OFM through the PSCD, OFM reviews the filed document for completeness and accuracy, and for content and substance. If there are questions on the contract submittal or if it is incomplete, the OFM Contract office sends the questions to the identified agency contact through the PSCD. The agency contact then receives an e-mail that OFM has questions on the filing. They then log on to the system to review and respond to the question(s).

Contracts and amendments occasionally fall into more than one category. Filings that fit into both a “review” category and an “approval” category are processed as “approval” filings, and are subject to the 10 working day filing period.

When the contract and justification have been analyzed and the filing is considered complete, the OFM Contract office designates the filing as reviewed or approved, as applicable. If the value of the contract filed is \$100,000 or greater, or an amended contract is \$100,000 or greater, additional internal review is conducted by OFM. (This is true even if a zero cost amendment is filed, but the contract itself is in an amount of \$100,000 or more.) Those filings are sent to the OFM Budget Division for review. Once the Budget Division review is complete and, if they concur with proceeding, a final decision is made by the OFM Contract Office and the filing is finalized.

After OFM processing is complete, the agency receives an e-mail from the PSCD indicating the disposition.

OFM disapproves contracts on an exception basis. In general, OFM works with agencies to assist in meeting their contracting needs. On occasion, there may be disagreement as to the approach on a contract or the need for the services. If this is the case, OFM will contact the agency to advise them of any concerns. Depending upon the issue or circumstances, more information may be required from the agency to resolve the issue. When that is not a feasible solution, the filing is disapproved. In instances when a sole source contract is submitted that OFM determines should be competitively procured, the agency may conduct a competitive solicitation process and re-file the new competitive contract.

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When the decision to disapprove a contract is made, OFM provides the reasons for disapproval to the agency as part of the “Decision Comments” in the PSCD.

4.2.3 Filings for Higher Education

Institutions of higher education file only personal service contracts or amendments that are “state funded” in whole or in part, and meet applicable filing dollar thresholds.

- Sole Source – File these contracts and their amendments when at least \$5,000 or more in state funds are included.
- Competitive – File these contracts and their amendments when at least \$20,000 or more in state funds are included.

The term “state funded”, as referenced herein, shall mean dollars that are appropriated by the State Legislature and/or allotted by the agency. Again, this term applies to personal service contract filing requirements for institutions of higher education only.

If a contract or amendment awarded by an institution of higher education is funded by both state and non-state funds, e.g., donated funds, it is subject to filing only if the state funded portion equals or exceeds \$5,000 for a sole source contract or \$20,000 for a competitive contract.

Therefore, sole source contracts of less than \$5,000 are not subject to filing based on a cumulative count of sole source contracts awarded to a contractor in a fiscal year, as they are with state agencies. The sole source contract itself must include \$5,000 or more in state funds to be subject to filing for institutions of higher education.

NOTE: The “state funded” distinction described above applies only to filing requirements. The competitive procurement and other requirements of Chapter 39.29 RCW apply to institutions of higher education regardless of fund source.

4.2.4 Contract Amendments

Generally, if a contract is subject to filing with OFM, its amendments are also subject to filing. Contract amendments to be filed are those that:

- Increase the maximum contract cost;
- Decrease the maximum contract cost;
- Revise the contract scope of work; and/or
- Revise the period of performance.

Decrease amendments to filed contracts are to be filed with OFM within three working days of start of services or date of execution, whichever is sooner, and are designated as “review” filings.

Contract amendments that do **not** require filing with OFM include the following:

- Amendments that result in administrative changes to the contract, such as an address change, budget line item adjustments that do not revise the total contract cost, change of project manager, etc.
- Amendments awarded at the end of the contract term solely for the purpose of extending the contract period for two months or less. This provision applies only once, per contract. It is not intended to authorize multiple short-term time extensions to a contract.

Some contract amendments are subject to review by OFM and others are subject to OFM approval. Generally, if the contract is subject to review, its amendment is also subject to review, and if a contract is subject to approval, its amendment is subject to approval.

Two examples illustrating exceptions follow:

1. A competitive contract for technical research services in the amount of \$20,000 is subject to OFM review. If the contract is amended by \$12,000, the amendment is subject to approval. The amendment exceeds 50 percent of the original contract amount, requires OFM approval, and is subject to the 10 working day filing period.
2. A contract is competitively awarded for \$10,000 and does not require filing. The contract is amended by \$4,500. The \$4,500 amendment is not subject to filing because the

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competitive contract is less than \$20,000 and the revised contract amount does not exceed 50 percent of the original contract amount. The contract is amended a second time for \$1,500. The \$1,500 amendment is subject to filing and OFM approval, because the \$1,500 combined with the previous amendment of \$4,500 results in total amendments of \$6,000, which exceeds 50 percent of the original contract amount. **Note:** This example would not apply to institutions of higher education because they file only competitive contracts that contain \$20,000 or more in state funds.

4.2.5 Contract Total

For filing purposes, the total dollar amount of the contract or amendment includes the fee and the amount for any expenses or taxes authorized for reimbursement under or through the contract.

4.2.6 Late Filings

What happens when you are looking through a contract file and discover that a contract or amendment has not been filed with OFM? We hope this will not happen, but if it does, the contract or amendment should be filed but will be designated as a “late filing”. A late filing may occur in three instances:

1. Contracts or amendments subject to the 10 working day filing period are filed with a requested start date that is less than 10 working days from the date of filing.
2. Competitively solicited contracts of \$20,000 or more, or their amendments, subject only to OFM review, are filed after the start date of services.
3. Emergency contracts are filed more than three business days after the start of the emergency work or execution of the contract.

Late filings are accompanied by justification in the PSCD that explains:

- The reason for the late filing; and
- How a similar situation resulting in late filing will be prevented in the future.

OFM will designate the filing “late” as part of the review process.

In the rare instances when contract filings are submitted to OFM after work under the contract or amendment is completed, OFM will “acknowledge” receipt of the filing and process it. However, OFM will not consider the filing to have been formally reviewed or approved by OFM.

4.2.7 Failure to File

Failure to file contracts as required in Chapter 39.29 RCW in a timely manner might subject the responsible state officer or employee to a \$300 civil penalty. A consultant who knowingly violates Chapter 39.29 RCW in seeking or performing work under a personal service contract may also be subject to a civil penalty of \$300 or 25 percent of the amount of the contract, whichever is greater. The State Auditor’s Office will audit these violations. The Attorney General’s Office may prosecute the violations.

4.3 Which Contracts and Amendments Must Be Filed?

Personal service contracts and amendments subject to filing are described in this section. Some of the categories may overlap; therefore, it is necessary to be familiar with all of them to ensure that contract filings are submitted timely and with complete and accurate justification.

Section 4.11 of this chapter includes two filing charts to provide a quick reference for filing categories – one applicable to state agencies and one to institutions of higher education. Again, institutions of higher education file only sole source contracts that include \$5,000 or more in state funds and competitive contracts with \$20,000 or more in state funds. All other agencies file contracts or amendments according to the filing requirements regardless of fund source.

4.3.1 Filing Sole Source Contracts and Amendments

Sole source contracts and their amendments are those that have not been competitively procured. Since absence of competition is rare for personal services, agencies should carefully consider both public and private sector resources before making a decision to pursue sole source award. Sole source procurements are improper if made only for the administrative convenience of the agency. When the agency determines that a competitive process is **clearly** not feasible, sole source contracts may be entered into, but with strict adherence to legislatively mandated criteria.

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Sole Source contracts are those that have not been competitively bid and should only be awarded under unusual or exceptional circumstances.

For sole source procurement to be appropriate, the contractor must provide professional or technical expertise of such a unique nature that the contractor is clearly and justifiably the only practical source to provide the service. The justification must hinge on the unique qualifications, abilities or expertise of the consultant to meet the agency needs or the unique nature of the service. Other special circumstances may also be considered such as confidential investigations, copyright restrictions, time constraints not caused by agency delay, or sole availability at the location required.

Pursuant to RCW 39.29, sole source contracts of less than \$5,000 may be directly negotiated, or agencies may choose to solicit by telephone to make the award decision.

Sole source personal service contracts and their amendments, in the amount of \$5,000 to \$19,999, or those that cumulatively equal or exceed \$5,000 or more with the same contractor in a fiscal year, are to be filed with OFM and are subject to **review** by OFM. For institutions of higher education, this only applies when the sole source contract includes \$5,000 or more in state funds.

Sole source contracts of \$20,000 or more and their amendments, which independently, or when combined with other sole source contracts between the agency and the contractor during the fiscal year, are filed with OFM for **approval**. For institutions of higher education, this applies only when the sole source contract, including its amendment(s), include \$5, 000 or more in state funds.

Whether the contract is subject to OFM review or approval, work may not begin until at least the tenth working day following, but not including the filing date. Ten working days excludes Saturdays, Sundays, legal state holidays and the date the contract is filed with OFM.

Thorough justification is required to explain the unique circumstances as part of filing with OFM.

In addition, amendments to sole source contracts of \$5,000 or more that result in the contract value exceeding 50 percent of the original contract amount or that substantially change the scope of work of the contract, are subject to **approval** by OFM. In that instance, follow the justification requirements for amendments that are greater than 50 percent of the original contract amount in Section 4.3.3.

The dollar range for filing is determined based on either the individual contract amount or a cumulative total of sole source

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contracts awarded to the contractor by an agency during the fiscal year. Only sole source contracts awarded to a single contractor during the fiscal year are considered in the cumulative total. Competitive personal service contracts with the same contractor, purchased service contracts or client service contracts with the contractor are not included in this cumulative count.

The amount paid to a contractor in a fiscal year is not a factor in determining the filing threshold. The maximum amount of the contract, including amendments, awarded to the contractor during a fiscal year is considered. Filing totals are based on contracts awarded by the agency.

If a sole source personal service contract is awarded to a contractor by an agency for \$4,500 in one fiscal period, and it is amended by \$500 in another fiscal period, the amendment is subject to filing. This is because the total amount of the sole source contract is now \$5,000, even though the amount actually awarded during the fiscal year is only \$500.

Note: This example does not apply to institutions of higher education since they file sole source contracts and amendments only when the contract includes \$5,000 or more in state funds.

4.3.1.1 Advertising a Sole Source Contract and Sample Sole Source Legal Notice

Sole source contracts of \$20,000 or more must be advertised a minimum of one day in a statewide or regional newspaper.

Personal service contracts of \$20,000 or more, which the agency has determined are appropriate for sole source procurement, are to be advertised in a statewide or regional newspaper for a minimum of one day. Advertisements may also be placed in other media. The advertising requirement is based on the individual contract amount of \$20,000 or more and is not a cumulative total of sole source contracts with a contractor in a fiscal year. Advertising is required regardless of the source of funds of the contract.

The sole source advertisement should include at a minimum:

- The name of the agency;
- A description of the services contemplated for sole source award;
- The proposed period of performance for the services;
- Information as to how an interested party may contact

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the agency; and

- The deadline for them to make such contact.

If the name of the proposed contractor is included in the advertisement – which is helpful but not required – the named individual or firm does not need to respond to the advertisement. A sample sole source advertisement is shown on the next page.

LEGAL NOTICE

SOLE SOURCE ADVERTISEMENT

(**Sample** Legal Notice Announcing Potential Sole Source Award for Sole Source Contracts of \$20,000 or More.)

The (Agency Name) contemplates awarding a sole source contract to

_____ for the time period of _____ to _____.

(Note: Include some information on basis for sole source decision, such as follow-on nature of work, unique expertise, etc.)

The contract will be issued on or about _____.

Offerors contemplating the above requirements are required to submit capability statements detailing their ability to meet the state's requirements within five (5) business days of this announcement. In the absence of other qualified sources, it is the state's intent to make a sole source award of the contract. For further information contact:

Agency Name _____

Attention: _____

Address _____

City, State, Zip code _____

Telephone: _____

FAX: _____

E-mail: _____

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4.3.1.1 Advertising a Sole Source Contract and Sample Sole Source Legal Notice – *continued*

If a formal response is received to the advertisement from other than the proposed contractor, and the response indicates the responding firm is qualified to provide the service, competitive solicitation must be conducted. If an agency can demonstrate that the proposed contractor is the only qualified and available entity to provide the service, although another firm or individual responded, the contract can be filed with OFM with complete explanation as to how this sole source conclusion was reached.

Exemptions from the advertising requirement for sole source procurements include:

- Contracts for services where selection of the contractor is based on a personal accomplishment or characteristic, such as guest speakers, performers and artists. This does not apply, however, to contracts for trainers, facilitators, etc.
- Contracts for services that will be provided entirely outside of Washington, Oregon, or Idaho and services that will be provided out of the country.
- A contract for services where the funding source mandates with whom the agency shall contract and, therefore, the agency does not have discretion in making the award decision. Examples include requirements set forth in statute (RCWs), budget provisos, federal grant awards, etc.
- Contracts that OFM determines are inappropriate for advertising based upon written request from the agency.
- Sole source contracts under \$20,000.

4.3.1.2 Filing a Sole Source Contract or Amendment

Sole source contracts and their amendments must be filed with OFM in the PSCD a minimum of 10 working days prior to the proposed start date. The earliest start date then is the tenth working day after, but not including, the date of filing. Ten working days exclude Saturdays, Sundays, legal holidays and the date the contract is filed with OFM.

A sole source contract filing will include summary contract data, a signed or certified copy of the contract or amendment,

including all referenced exhibits, and justification explaining the sole source decision.

4.3.1.3 Sole Source Filing Justification

Sole source contracts and amendments subject to filing requirements must include a comprehensive explanation of the circumstances surrounding the sole source award decision.

JUSTIFICATION FOR A SOLE SOURCE CONTRACT

1. **Specific Problem or Need.** Identify and fully describe the specific problem, requirement or need that the contract is intended to address and that makes the services necessary. Also include an explanation as to how the agency determined the services are critical or essential to agency responsibilities or operations and/or whether the services are mandated or authorized by the Washington State Legislature. Do not simply reiterate the services to be provided by the contractor.
2. **Other Public Resources.** Explain what effort has been taken to conclude that:
 - (a) Sufficient staffing or expertise is not available within the agency, not just an agency division, to perform the service; and
 - (b) Other governmental resources (local, state or federal agencies) external to the agency are not available to perform the service more efficiently or more cost effectively.
3. **Sole Source Criteria.** Include a detailed explanation of the items below that are relevant to the sole source decision:
 - **Unique characteristics.** Unique qualifications, abilities or expertise of the contractor to meet the agency needs and/or the unique nature of services. Unique qualifications or services would be those that are highly specialized or one-of-a-kind. Other factors that may be considered include past performance, cost effectiveness (learning curve) and/or follow-up nature of the required services. Past performance alone does not provide adequate justification for a sole source contract.
 - **Special Circumstances.** Provide a description of any other special circumstances that may be relevant, such as confidential investigations, copyright restrictions,

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time constraints, or sole availability at the location.

- (a) *Time Constraints* – If time constraints are applicable, identify when the agency was on notice of the need for the services, the entity that imposed the constraints, explain the authority (if not obvious) of that entity to impose them, and to provide the timelines for work to be accomplished.
- (b) *Geographic Limitation* – If the proposed contractor is the only source available in the geographic area, state the basis for this conclusion and the rationale for limiting the size of the geographical area selected.

If the contract is being filed based on a cumulative sole source total of contracts awarded to the contractor in a fiscal year, include the total amount of the other unfilled sole source contracts and amendments awarded during the fiscal year to this contractor.

- 4. **Reasonableness of Costs.** Since competition was not used as the means for procurement, explain how the agency concluded that the costs, fees or rates negotiated are fair and reasonable. Either make a comparison with comparable contracts, use the results of a market survey or employ some other appropriate means calculated to make such a determination.
- 5. **Sole Source Advertisement.** Sole source contracts of \$20,000 or more are required to be advertised in either a statewide or regional newspaper. (See preceding Section 4.3.1.1 for additional information on the sole source advertisement.) Advertisements may also be published in other media as appropriate. The advertising requirement is based on the estimated contract amount, and is not a cumulative total of sole source contracts with a contractor in a fiscal year.

Include the name of the newspaper in which the advertisement was published, the date(s) of the advertisement and the name(s) of those responding. If no responses are received, please indicate so. If one or more responses are received, explain how the agency concluded the contract is appropriate for sole source award. List any other potential contractors that were contacted through other means and explain why these firms could not perform the services.

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If the sole source contract is exempt from advertising, explain the basis for the exemption and include a copy of any documentation that provides the authority for the exemption, as applicable.

Sole source advertisement is not required when executing an amendment to a sole source contract.

Institutions of higher education are required to advertise sole source contracts of \$20,000 or more, regardless of the source of funds.

JUSTIFICATION FOR AN AMENDMENT TO A SOLE SOURCE CONTRACT

For amendments to sole source contracts, the justification is to include:

- The rationale for executing an amendment rather than competitively procuring the services and awarding a new contract. Include how executing the amendment can most effectively achieve the agency's purpose.
- An explanation as to why the services under the proposed amendment were not included in the terms of the original contract.
- An explanation of any changed conditions since contract award and any other applicable information that clearly justifies the decision to amend the contract.
- Whether the new services are within the scope of services of the original contract.
- Whether the rates are the same as those negotiated under the original contract and explain any increases.

If the amendment is awarded to a sole source contract that was not filed, additional justification elements are required:

- Specific problem or need;
- Other public resources;
- Sole source criteria; and
- Reasonableness of costs.

If an amendment to a sole source contract results in the contract value exceeding 50 percent of the original contract amount or

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substantially changing the scope of work, follow the justification requirements in Section 4.3.3.

4.3.2 Filing Competitively Solicited Contracts/Amendments of \$20,000 or More

Personal service contracts and their amendments, in the amount of \$20,000 or more, which have been competitively solicited, are subject to either **review or approval** by OFM, depending upon the type of service or dollar amount.

OFM **review** is required for most competitive contracts in this category. However, the Washington State Legislature has taken special interest in the categories of services highlighted below and has required advance **approval** by OFM for the services when the contract is \$20,000 or more. Amendments to these contracts are also subject to filing and to OFM approval.

Management Services – Sub-object Code: CA - Includes, but is not limited to, services that impact agency policy, regulatory issues, or which have broad agency or state implications. Includes services to assist management with operation or management of the agency or unit or division of the agency. Includes services that assist management with program development, implementation, coordination or program evaluation, and/or external quality review (may be mandated by the Legislature or federal funding source). Includes services that result in operational or managerial recommendations, performance audits, assessments, reports and studies, as well as studies requested by the Legislature and feasibility studies with significant policy impact. Also includes services for strategic planning, needs assessment, business process re-engineering, facilitators for focus groups or major staff functions, risk management and loss prevention, harassment and related investigations, mediation, lobbying, etc.

Management services also include design, development, and/or implementation of major agency information technology or telecommunications systems; re-engineering of major information technology systems; project management of major technology systems; quality assurance on, or evaluation of, major systems; and development of information technology strategic plans. “Major” systems for the purpose of this definition are those that have significant agency-wide or statewide impact.

Organizational Services - Sub-object Code: CA

Includes services to study, analyze or review the organizational structure, framework, or culture of the agency or divisions within the agency, and services implementing the recommendations of such a study or effort. Also included are services that provide recommendations to management on enhanced efficiencies, productivity and process improvements, and quality control in the organization.

Marketing Services – Sub-object Code: CG

Includes services to develop or implement a marketing or advertising plan or campaign; services related to marketing or promoting an agency's service or the state, as for tourism purposes; public relations or media services; and market research and development. Also includes public involvement campaigns; trade development and assistance; development of market research and customer satisfaction surveys and/or assessment of survey results; conference or trade show coordination; fund raising; and related types of services.

Communication Services – Sub-object Code: CH

Includes design, development, and/or oversight of audio/video media productions, brochures, manuals, guidelines, newsletters, display exhibits, signs, posters, annual reports, etc.; technical writing/editing; speech writing; grant writing; graphic design services; development of communication strategies; and other related services to inform the public or other governmental agencies about a subject or issue. **Does not include** services related to installation of computer system linkage and telecommunications systems, which are classified as purchased services.

Employee Training Services – Sub-object Code: CJ

Includes training provided to meet employee training needs for training provided to all or most state agency employees up to six times per year. Also includes managerial training, employee counseling services, guest speakers, and curriculum development for all types of training services. **Does not include** training that is offered to all or most state employees on a continual or recurring basis (more than six times per fiscal year), such as basic first aid, grammar review, effective writing skills, etc. which is purchased service training. **Does not include** training provided incidental to the purchase of equipment, but not included in the purchase price, technology-based distance learning options (satellite, e-learning, web

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casting), or standard information technology training related to hardware or software in use by an agency. **Does not include** services to provide personal service training to local government or other public or private entities, which are classified as CZ, “Other Personal Services”. **Does not include** training provided by providers directly to agency clients, which is a client service contract and classified as NB.

Recruiting Services – Sub-object Code: CK

Includes services performed by a professional search firm to assist in recruitment of a successful candidate to fill a vacant position in an agency. **Does not include** amounts paid to trade magazines, or newspapers for publishing open position announcements.

JUSTIFICATION FOR A COMPETITIVE CONTRACT

Documented justification that must accompany each filing of a competitive contract is to provide a thorough explanation of the award decision and is to be capable of withstanding public, legislative and executive scrutiny. The PSCD will dynamically display the questions you need to answer for the specific contract or amendment you are filing. They are listed here for a competitive contract filing so that you will know the information to provide as part of the filing process.

1. Specific Problem or Need. Identify and fully describe the specific problem, requirement or need that the contract is intended to address and that makes the services necessary. Also, include an explanation as to how the agency determined the services are critical or essential to agency responsibilities or operations and/or whether the services are mandated or authorized by the Legislature.
2. Other Public Resources. Explain how the agency concluded that:
 - (a) Sufficient staffing or expertise is not available within the agency to perform the service, and
 - (b) Other governmental resources (local, state, or federal agencies) external to the agency, are not available to perform the service more efficiently or more cost effectively.
3. Competitive Process. Provide a thorough description of the competitive solicitation process including all of the

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following:

- Name(s) of the major, daily Washington newspaper and any other publication(s) in which an advertisement was published.
 - How many solicitation documents were issued.
 - Whether the solicitation or notice of solicitation was also published on the Internet.
 - Name(s) of the firms responding with proposals.
 - Description of the evaluation process (e.g., evaluation committee scored the responses, a selection committee made the award decision, etc.).
 - The basis on which the contractor was selected. Include the strengths of this contractor that resulted in the higher score and selection for award. Do not simply list the evaluation criteria.
4. Reasonableness of Costs. Explain how it was determined that costs are fair and reasonable or within the competitive range.

JUSTIFICATION FOR AN AMENDMENT TO A COMPETITIVE CONTRACT

For amendments to competitive contracts that have been filed, the justification is to include:

- The rationale for executing an amendment rather than competitively procuring the services and awarding a new contract. Include how executing the amendment can most effectively achieve the agency's purpose.
- An explanation as to why the services under the proposed amendment were not included in the terms of the original contract or solicitation document and whether the new services are within the scope of services of the original contract.
- State if the option to extend the contract was included in the solicitation and for what additional period(s).
- An explanation of any changed conditions since contract award and any other applicable information that clearly justifies the decision to amend the contract.
- Whether the rates are the same as those negotiated under the original contract and explain any increases.

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If the amendment is awarded to a competitive contract that was not filed, e.g., less than \$20,000, but the amendment is subject to filing, additional justification elements will be required:

- Specific problem or need;
- Other public resources;
- Contractor qualifications; and
- Reasonableness of costs.

If a contract amendment results in the contract value exceeding 50 percent of the original contract amount or substantially changing the scope of work, follow the justification requirements of Section 4.3.3 in this chapter.

4.3.3 Contract Amendments Cumulatively Exceeding 50 Percent of the Original Contract Value and/or That Substantially Change the Scope of Work of the Original Contract

Large or substantial contract amendments fall into a separate filing category subject to OFM approval. This requirement was implemented to ensure large amendments were being entered into only as appropriate and not as a means of avoiding competitive procurement. Therefore, contract amendments that singly or cumulatively exceed 50 percent of the value of the original contract, or that substantially change the original scope of work in the contract or in the solicitation document, must be filed with and approved by OFM. This applies to both competitive contracts or sole source contracts which, when amended, total \$5,000 or more. For institutions of higher education, this applies only to sole source contracts with \$5,000 or more in state funds or competitive contracts with \$20,000 or more in state funds.

The agency will need to determine if the scope of the original contract would significantly change under the terms of the proposed amendment. Substantial changes to a contract are those that represent a significant change in quantity, duration, nature or cost of the work. If so, the changes must be submitted to OFM for approval. It may also be appropriate to procure the service under a new contract rather than to amend an existing contract if service is substantially different.

An example of a substantial change that could be appropriately executed as a contract amendment is a contract wherein the

work is broken into phases, and approval of additional phases (through contract amendment) is subject to satisfactory completion of a previous phase, and such work phasing is clearly set forth in the solicitation document or original contract. Another example is an amendment to a contract that includes an option to extend the work at the discretion of the agency (e.g., extending a two-year contract for one additional year.)

When a personal service contract is subject to filing with OFM, most amendments to that contract are also subject to filing. Thus, amendments that add funds to a contract equal to or less than 50 percent of the original contract value are still required to be filed if the contract was filed. Amendments that are greater than 50 percent of the original contract value and/or substantially change the scope of work require filing with OFM and OFM **approval**.

The following three examples may assist in clarifying this filing category.

Example 1. A competitive contract for technical research services in the amount of \$20,000 is filed by a state agency for OFM review, but not approval, and is not subject to the 10 working day filing period. A contract amendment adding \$10,000 to the contract would be required to be filed with OFM, also for OFM review and is not subject to the 10 working day filing period. However, a contract amendment for \$10,500 would be required to be filed with and approved by OFM, since it is greater than 50 percent of the original contract value. The amendment would also be subject to the 10 working day filing period.

Example 2. A competitive contract for technical research services in the amount of \$10,000 is not subject of filing with OFM. (Competitive contracts under \$20,000 do not require filing.) However, if the contract is amended by \$5,001, the amendment would be subject to filing with and approval by OFM, since it is an amendment that is greater than 50 percent of the original contract value. [An amendment to this contract for \$5,000, rather than \$5,001, would not be subject to filing since the contract was not subject to filing and the amendment is not more than 50 percent of the original contract value.]

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Example 3. A competitive contract for management consulting services in the amount of \$20,000 is subject to filing with OFM, approval by OFM, and the 10 working day filing period. A proposed amendment that adds \$1,000 to the contract would be subject to filing and OFM approval, since the original contract was subject to filing and OFM approval. A proposed amendment in the amount of \$11,000 would be subject to filing and OFM approval for two reasons:

- (a) The amendment is revising a competitive, management consulting contract of \$20,000 or greater that was filed and subject to approval; and
- (b) The amendment is greater than 50 percent of the original contract value for a contract that, when revised, is \$5,000 or more.

Note: These competitive examples apply to institutions of higher education only if the contract includes \$20,000 or more in state funds.

4.3.3.1 Filing an Amendment that Exceeds 50 Percent of the Original Contract Value and/or That Substantially Changes the Scope of Work of the Original Contract

Amendments in this category must be filed with OFM at least 10 working days prior to the proposed start date. The start date is the tenth working day after, but not including, the date of filing. Ten working days excludes Saturdays, Sundays, and legal state holidays.

4.3.3.2 Filing Justification

Contract amendments in this category are to be accompanied by a thorough explanation of the decision to amend the contract and is to be capable of withstanding public, legislative and executive scrutiny.

JUSTIFICATION FOR AN AMENDMENT EXCEEDING 50 PERCENT OF THE ORIGINAL CONTRACT VALUE OR A SUBSTANTIAL CHANGE TO THE SCOPE OF WORK

Specific Problem or Need. Identify and fully describe the specific problem, requirement or need which the amendment is intended to address and which makes the amendment necessary. Include an explanation as to how the agency

determined the services under the proposed amendment are critical or essential to agency responsibilities or operations and/or whether the services are mandated or authorized by the Legislature.

Other Public Resources. Explain how the agency concluded: (a) that sufficient staffing or expertise is not available within the agency, not just within an agency division, to perform the services, and (b) that other governmental resources (local, state, or federal agencies) external to the agency, are not available to perform the services more efficiently or more cost effectively.

Procurement Method. State whether the original contract was competitively procured or awarded as a sole source, when the original contract was awarded, and the cumulative dollar amount of the original contract and any subsequent amendments prior to this amendment.

Why Amendment Preferred. State the rationale for executing an amendment to the existing contract rather than competitively procuring the services and awarding a new contract. Include how executing the amendment can most effectively achieve the agency's purpose. Include whether the new services are within the scope of the original contract or solicitation document.

Changes Since Award. Explain why the services under the proposed amendment were not included in the terms of the original contract or in the solicitation document. Include any conditions that have changed since contract award and other information that supports the decision to amend the contract.

Contractor's Qualifications. Provide an explanation of the contractor's qualifications, abilities or expertise to meet the agency's specific needs for the services under the amendment.

Reasonableness of Costs. Include how the agency determined that the costs, fees or rates negotiated for the amendment are fair and reasonable, since competitive bids were not received for the services under the amendment. Generally, the rates should be the same as those in the original contract. If they are not, include justification for any increased pricing.

4.3.4 Emergency Contracts

Another exception to competitive procurement is an emergency contract, which is awarded to resolve an emergent situation. An "emergency" means a set of unforeseen circumstances

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beyond the control of the agency that either presents a real, immediate threat to the proper performance of essential state functions or that may result in material loss or damage to property, bodily injury or loss of life if immediate action is not taken. Lack of prior planning does not constitute an “emergency”.

Examples of emergency contracts are post-earthquake assessments and evaluations, fire damage consultation, personnel investigations of a critical and time-sensitive nature.

Emergency contracts in the amount of \$5,000 or greater, and their amendments, must be filed with OFM. Institutions of higher education file these contracts only when the contract includes \$5,000 or more in state funds.

4.3.4.1 Emergency Contract Filing Justification

Documented justification that must accompany each emergency filing is to provide a thorough explanation of the emergency and is to be capable of withstanding public, legislative and executive scrutiny.

JUSTIFICATION FOR AN EMERGENCY CONTRACT

1. **Nature of Emergency.** Explain the nature of the emergency and all relevant circumstances associated with the emergency.
2. **Health or Safety Threat.** Describe the threat to the health or safety of individuals, property, or essential state functions if immediate action was not taken. Provide an estimate of the potential material loss or damage.
3. **Alleviate or Eliminate Emergency.** Explain how the services of the contractor alleviated or eliminated the emergency. Describe the consequences of not taking the emergency action and the risks associated with inaction.
4. **Contractor’s Qualifications.** Describe the contractor’s qualifications, experience, and background to provide the emergency service and the basis on which this contractor was selected over other qualified firms.
5. **Reasonableness of Costs.** Explain how the agency concluded that costs negotiated were fair and reasonable since competition was not conducted.

JUSTIFICATION FOR AN AMENDMENT TO AN EMERGENCY CONTRACT

Amendments to emergency contracts are rare. If the emergent contract conditions still exist, OFM will process the amendment as an “emergency” amendment with the same three working day requirements as a new emergency contract. If the conditions have been alleviated and are not as severe, OFM may designate the amendment as a sole source contract amendment with the required 10 working day period prior to start of work. The emergency justification is to include:

- The rationale for executing an amendment rather than competitively procuring the services and awarding a new contract. Include how executing the amendment can most effectively achieve the agency’s purpose.
- An explanation as to why the services under the proposed amendment were not included in the terms of the original contract and whether the new services are within the scope of services of the original contract.
- An explanation of any changed conditions since contract award and any other applicable information that clearly justifies the decision to amend the contract.
- Whether the rates are the same as those negotiated under the original contract and explain any increases.

4.4 OFM Response to Filings

The agency should expect to receive either a written or oral response from OFM within 10 working days from the date of filing. If the filing is incomplete or needs clarification, OFM will request further information prior to processing, and this may delay OFM’s final decision. If a filing is totally incomplete and lacking in content, OFM will return it to the agency to be revised and re-filed.

Once OFM has completed processing of the filing, the agency will receive electronic verification of OFM's decision from the PSCD.

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If OFM anticipates disapproval, the agency will be notified promptly.

The decision to disapprove a contract will be in writing from OFM through the PSCD and will clearly state the reason for disapproval.

4.5 Late Filing

Contracts or amendments are designated "late" when:

- Contracts or amendments subject to the ten-working day filing period are filed with a requested start date that is less than 10 working days from the date of filing.
- Competitively solicited contracts or their amendments subject to OFM review are filed after the start date of services.
- Emergency contracts are filed more than three business days after the start of work or execution of the contract.

An explanation is to be submitted as part of the filing justification stating the reason for the late filing. Also include an explanation as to how a similar situation could be prevented in the future.

In the rare instances when contract filings are submitted to OFM after work under the contract or amendment is completed, OFM will "acknowledge" receipt of the filing and process it. OFM will not consider the filing formally reviewed or approved by OFM.

4.6 Reporting of Unfiled Personal Service Contracts

Personal Service contracts that are not subject to filing with OFM are reported through the Personal Service Contract Database (PSCD).

OFM is required to maintain a publicly available list of personal service contracts awarded by state agencies. Contracts and amendments filed with OFM throughout the fiscal year will automatically be included on the list. Those personal service contracts and amendments that were not subject to filing are to be reported to OFM no later than the end of the fiscal year, in which the contract was awarded. This report is not to include contracts that are exempt under RCW 39.29.040, and further explained in Section 4.9 of this chapter.

Since June 11, 1998, filing requirements for state agencies and institutions of higher education have been different, based on fund source. Therefore, the annual report requirements are also different, as shown below.

State agencies report competitively awarded personal service contracts and amendments in the amount of \$5,000 - \$19,999. (Exceptions are amendments to competitive contracts that are greater than 50 percent of the original contract value, which may have been filed in this dollar range, and are therefore not required to be reported.)

Institutions of higher education report:

- Sole source contracts and amendments of \$5,000 or more that are funded by sources **other than state funds, or that include less than \$5,000 in state funds.**
- Competitive personal service contracts and their amendments in the amount of \$5,000 - \$19,999, **for all fund sources.** (Exceptions are amendments to competitive contracts that are greater than 50 percent of the original contract value, which may have been filed in this dollar range, and therefore are not required to be reported.)
- Competitively awarded contracts of \$20,000 or more and their amendments funded by sources **other than state funds, or that include less than \$20,000 in state funds.**

FILING REQUIREMENTS FOR PERSONAL SERVICE CONTRACTS

Reported contract information shall be submitted to OFM through the Personal Service Contract Database (PSCD). It is recommended that information on the “reported” contracts be entered into the PSCD as the contracts are awarded or amendments executed, rather than compiling and entering all the data at the end of the fiscal year.

Information for the annual report is to be submitted to OFM in the format prescribed by OFM. At a minimum, the following information should be maintained:

- Agency Number;
- Agency Contact Names;
- Name, address, and Taxpayer Identification Number (TIN) of the contractor;
- Type of contract (new or amendment);
- Contract or amendment start and end dates;
- Dollar value of the original contract or amendment; if an amendment, the revised contract total;
- Fund source;
- Description of the scope of work;
- Procurement type, (e.g., sole source, competitive, or emergency;) and
- Employment status of contractor, whether a current or former state employee.

4.7 Annual Contract Procedures Report

RCW 39.29.110 requires state agencies that have awarded or amended personal service contracts and client service contracts during a calendar year to provide a report to OFM detailing the procedures the agency employed in entering into, renewing, and managing these contracts. The report shall apply to state agencies that have entered into or renewed (amended) personal service contracts between January 1 and December 31 of each year.

The Contract Procedures Report is a new requirement effective January 31, 2004.

OFM will notify agencies of the information needed in the report to satisfy this requirement. The Contract Procedures report is due to OFM by January 31 of each year.

The following items will be required as part of submitting the Contract Procedures Report:

1. **Contract Procedures.** A copy of, or a web site link for, the agency's procedures on personal service contracts. The same information is required for client service contracts.

If an agency does not have internal contract procedures in place, but the agency utilizes the policies of the State Administrative and Accounting Manual, Sections 15.10, 15.20 and 15.30 for personal service contracts, and Section 16.10 for client services, those policies should be referenced.

2. **Contract Totals.** OFM has agency totals for personal service contracts. Therefore, if the agency has filed and reported its personal service contracts, as required, these totals do not need to be provided for personal services. If not, the agency needs to file or report the required contracts as soon as possible. Contract totals for client service contracts awarded during the calendar year period of January through December do not need to be provided to OFM. Include the number of and total dollar value of the contracts awarded. Do not submit a list of the client service contracts, just the totals.

4.8 Quarterly Report on Architectural/Engineering Services

Agencies including institutions of higher education that award architectural and engineering (A/E) agreements must submit quarterly reports to OFM on the A/E agreements and addenda awarded during the period. The reports are due the 15th of each month following the end of the quarter (e.g., October 15, for the period July through September; January 15, for the period October through December, etc.) If the 15th of the month falls on a Saturday, Sunday, or state holiday, the report will be due the next working day. The Department of General Administration submits the report on behalf of the agencies for which they contract.

Reported architectural and engineering contracts and amendments are to be entered into the OFM Personal Service Contract Database. The entries in the database may occur at the time of contract award or addendum execution, rather than at the end of the quarter.

Quarterly reports for architectural and engineering services must include the following information:

- Agency number;
- Agency contact name(s);
- Name, address and TIN of the contractor;
- Whether the entry is a new agreement or an amendment;
- Dollar amount of the agreement or the amendment;
- Description of the project;
- Whether the contractor or agent is a current or former state employee; and
- Whether the contract was competitively procured per Chapter 39.80 RCW.

4.9 Exemptions from Competition and Filing Requirements

When a personal service contract falls under one of the categories described below, it is exempt from the competitive procurement and filing requirements of Chapter 39.29 RCW. However, agencies may establish internal policies or procedures that would require competition of these categories

of contracts in certain instances. Funding source requirements may also subject a contract to competitive bid. If in doubt about whether a contract falls under one of the exemptions, contact OFM or your agency's Assistant Attorney General.

4.9.1 Contracts Totaling Less Than \$5,000

Personal service contracts with a total value of less than \$5,000 are exempt. However, two factors are to be considered under this exemption:

- Competition is not required for personal service contracts under \$5,000, but it is advisable to use a competitive process whenever possible.
- Agencies are to track personal service contracts under \$5,000, since sole source contracts awarded to a contractor are considered cumulatively by fiscal year for filing purposes. When the cumulative total of sole source personal service contracts and amendments awarded to a contractor in a fiscal year reaches \$5,000 or greater, the contract or amendment that brings the total to, or over, the \$5,000 threshold is subject to filing, regardless of its individual amount. Any subsequent sole source contracts and amendments awarded to that contractor in the fiscal year are, of course, also subject to filing.

Contracts competitively awarded to the contractor in the fiscal year are not included in this count.

4.9.2 Contracts Subject to Tariff

This exemption applies to contracts awarded to companies that furnish a service where the tariff is established by the Washington Utilities and Transportation Commission or other public entity and, therefore, the fee structure is fixed. This exemption does not apply to contracts with the contractor where no fixed rate structure is imposed.

4.9.3 Intergovernmental Agreements

This exemption applies to contracts between Washington State agencies or between a Washington State agency and either a unit of local government, another state or the federal government or an Indian Tribe recognized by the federal government. These are called intergovernmental or interagency agreements, and they are governed by the Interlocal

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Cooperation Act, Chapter 39.34 RCW.

A sample Interagency Agreement that is used between state agencies is included as Appendix B to this guide.

4.9.4 Services for a Standard Fee

This exemption applies when a standard fee is established by the contracting agency or any other governmental entity, and a like contract for the standard fee for equivalent services is available to qualified applicants as services are required. Standard fees may include hourly or daily rates or similar fee-for-service rates. Examples: doctors or dentists who agree to provide services to state agency clients at a rate established by the agency and hearings examiners who conduct hearings for a set rate.

The intent of the exemption is to allow multiple qualified firms that have agreed to a rate established by the agency in advance to provide the same service, generally on a rotating basis, in order to ensure equal and fair distribution of services. Annual advertising is recommended as an effective way to guarantee equal opportunity to qualified entities when contracting under this exemption.

4.9.5 Collaborative Research

This exemption applies to contracts for services that are necessary for conduct of collaborative research where prior approval is granted by the funding source. The exemption may be used when an agency is applying for research or grant funds and names a firm or individual in the written grant application or proposal to perform specific services. Upon approval from the funding source and receipt of funds, the resultant contract with the firm or individual named in the grant application is not required to be filed with OFM, nor does it require approval or review by OFM.

This exemption is only to be used when the agency initiates the activity by applying for specific funding and names the contractor(s) in the application. The exemption is not applicable when the funding source initiates the activity and requires the agency to use a specific contractor. In that instance, the contract is a sole source, and the sole source advertisement may be waived.

4.9.6 Client Services

Personal services provided directly to agency clients are also exempt. RCW 39.29.006(2) defines client services as:

“...services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.”

More detailed information on client service contracts is available in OFM’s “Guide to Client Service Contracting” available on the OFM website.

Clients are members of the public, external to state government, who have social, physical, medical, economic or educational needs. These individuals may need government assistance to meet their needs. **Client service contracts are those entered into for professional or technical services with a contractor for delivery of direct services to agency clients.**

Clients, from the agency viewpoint, are those individuals the agency has statutory responsibility to serve, protect or oversee. For example:

- Clients of the Department of Social and Health Services include nursing home patients, welfare recipients, institutionalized individuals, foster children, and children in need of therapy.
- Clients of the Department of Veterans Affairs include veterans and widows of veterans.
- Clients of the Department of Corrections include inmates.
- Clients of the Department of Labor and Industries include injured workers and private employers.
- Clients of the Employment Security Department include unemployed and displaced workers and veterans.
- Students at institutions of higher education may be considered clients for contracts where the contractor provides direct services to students, e.g. counseling, guest lecturers for students and/or the public, student workshops, etc.

Examples of the types of services provided to state agency clients are:

- Drug abuse treatment
- Job counseling
- Medical, dental and mental health treatment

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- Foster care
- Job training programs
- Physical and occupational rehabilitation
- Day care services

The contractor must be providing **direct service** to the client to be designated a client service contract. Direct service means the contractor is in direct contact with individual clients as part of providing the client service.

Contracts for development of programs or media campaigns which will ultimately benefit the client, but which, under the contract scope, do not currently provide a direct service to the client, are not considered client service contracts. For example, development of a training curriculum that would ultimately be offered to clients is not a client service contract. The contract that provides the training to the client is the client service contract.

For some state agencies, where identifying clients is more difficult, it may help to review the agency's implementing statute in the Revised Code of Washington where the mission and duties of the agency are set forth.

Typically, clients are not considered to be:

- Providers of services (For example, if a state agency contracts with a trainer to provide training to contractors of counseling services, the contract with the trainer is not a client service)
- State agency staff (State agencies that only serve other state agency staff typically do not have client service contracts).
- Businesses (When state agencies contract to assist businesses to increase business opportunity and earn more money, those services are not considered client services).

Contracts directed broadly to the general public are not considered client service contracts. Client services contracts must provide services to client a group(s).

Client service contracts are to be processed in accordance with each agency's internal controls. Good business practice suggests that agencies use a competitive process to award these contracts, even though they are exempt from the competitive

procurement requirements of Chapter 39.29 RCW. Funding source requirements may subject a client service contract to competitive bid.

In instances where the client service designation is not clear, it is advisable not to categorize the contract as such.

4.9.7 Architectural and Engineering Services

Contracts for architectural and engineering services are exempt from personal service contract procurement and filing requirements, since they are subject to the competitive acquisition requirements of Chapter 39.80 RCW. You may contact the Department of General Administration, Division of Engineering and Architecture, at (360) 902-7272 for more information about contracting for these services.

However, state agencies are required to submit quarterly reports to OFM on architectural and engineering agreements and amendments awarded for the three-month period, per RCW 39.80.070. The reports are to be submitted to OFM through the Personal Service Contract Database.

4.9.8 Expert Witness Contracts

Expert witness contracts are those awarded when a subject matter expert is requested to testify as an expert witness for the purpose of litigation. These contracts may also include case consultation, research, legal services, or other related activities, but the purpose of the contract ultimately must include the possibility of expert testimony if the case goes to trial. An expert witness is someone who is a subject matter expert, or has particular knowledge or skills related to a subject. It is not necessarily any person who might be called to testify in relation to a specific case. This does not include lay witnesses.

4.9.9 Bank Supervisory Agreements

Contracts for bank supervision are authorized by RCW 30.38.040. This exemption applies to contracts entered into by the Department of Financial Institutions to conduct examinations of branches of out-of-state banks that are operating in Washington State.

4.9.10 Interpreter Services

Contracts for interpreter services and interpreter brokerage

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services awarded by the Department of Social and Health Services on behalf of limited English speaking or sensory-impaired applicants and recipients of public assistance are exempt.

4.9.11 Exemptions by the Director of OFM

RCW 39.29.011(5) authorizes the Director of OFM to exempt specific contracts or classes or groups of contracts from the competitive procurement process, when it has been determined that such a process is not appropriate or cost-effective. This exemption is not meant to be used in lieu of filing sole source contracts. It is intended for exceptional or unusual circumstances that may preclude the use of the standard competitive and filing processes.

If an agency concludes that competitive procurement is not appropriate or cost-effective for a particular category of service or type of contract, the agency may request OFM to exempt that category of contracts from the competitive procurement and filing requirements.

The agency should forward a written request to the Director of OFM, well in advance of the proposed contract start date. At a minimum, the request must include:

- A description of the type of service for which an exemption is requested;
- An explanation as to why an exemption is considered appropriate;
- Reason(s) why competitive procurement is not appropriate or cost-effective; and
- An explanation of the effect or impact of not having an exemption.

OFM will provide the agency with a timely written response. In the event OFM does exempt a particular service or category of contracts from competitive procurement, other affected agencies will be notified.

4.10 Civil Penalty

RCW 39.29.020 provides for a civil penalty for failure to comply with the requirements of Chapter 39.29 RCW. The

state officer or employee executing personal service contracts is responsible for compliance with the requirements. A state officer or employee who knowingly violates Chapter 39.29 RCW is subject to a civil penalty of \$300.

A contractor who knowingly violates Chapter 39.29 RCW, in seeking or performing work under a personal service contract, is subject to a civil penalty of \$300 or 25 percent of the amount of the contract, whichever is greater.

The State Auditor is responsible for auditing violations of Chapter 39.29 RCW, and the Attorney General is responsible for prosecuting violations.

4.11 Filing Charts

The two filing charts on the next pages summarize the current personal service contract filing requirements – one is applicable to state agencies only and the other is applicable to institutions of higher education only.

PERSONAL SERVICE CONTRACT FILING CATEGORIES FOR STATE AGENCIES
(Exclusive of Institutions of Higher Education)

PERSONAL SERVICE CONTRACTS/AMENDMENTS	DOLLAR THRESHOLD FOR FILING	OFM REVIEW OR APPROVAL	FILING PERIOD
SOLE SOURCE Contracts and Amendments (singly or cumulatively awarded to a contractor in a fiscal year period by an agency)	\$ 5,000 - \$19,999	Review*	10-working day advance filing
	\$20,000 or more	Approval	10-working day advance filing
EMERGENCY Contracts and Amendments	\$5,000 or more	Review*	3-working days from date of execution or start of work, whichever is sooner
COMPETITIVE Contracts and Amendments (not included in the categories below)	\$20,000 or more	Review*	Work may start on or after the working day filed with OFM.
COMPETITIVE Contracts and Amendments for: Management Consulting, Organizational Development, Marketing, Communications, Employee Training and Employee Recruiting	\$20,000 or more	Approval	10-working day advance filing
AMENDMENTS to competitive or sole source contracts that result in the contract amount being greater than 50% of the original contract value and/or amendments that constitute a substantial change in the scope of work.	\$5,000 or more (Contract, when amended, equals \$5,000 or more)	Approval	10-working day advance filing

* If contract amendments in these categories result in the contract exceeding 50% of the original contract amount or if they make a substantial change in the scope of work, the amendment is subject to OFM approval, rather than to review. Such amendments should be filed under the >50% amendment category.

NOTES:

- 1) Subsection 15.30.10.e, lists certain types of amendments that are not subject to filing.
- 2) Subsection 15.30.90.a, lists the category of contracts that are not filed with OFM, but are submitted on an annual report to OFM at the end of each fiscal year.

PERSONAL SERVICE CONTRACT FILING CATEGORIES
(Institutions of Higher Education Only)

PERSONAL SERVICE CONTRACTS/AMENDMENTS	FUND SOURCE	OFM REVIEW OR APPROVAL	FILING PERIOD
SOLE SOURCE Contracts and Amendments (singly or cumulatively awarded to a contractor in a fiscal year period by an agency) (Contract must have \$5,000 or more in state funds to be filed; therefore contracts with less than \$5,000 in state funds are not calculated cumulatively.) \$ 5,000 - \$19,999 (\$5,000 or more state funds)	State Funds* \$5,000 or more	OFM Review **	10-working day advance filing
	Non-State Funds	Filing not required	N/A
\$20,000 or more (\$5,000 or more state funds)	State Funds* \$5,000 or more	OFM Approval	10-working day advance filing
	Non-State Funds	Filing not required	N/A
EMERGENCY Contracts and Amendments \$ 5,000 or more (\$5,000 or more state funds)	State Funds* \$5,000 or more	OFM Review **	3-working days from date of execution or start of work, whichever is sooner
	Non-State Funds	Filing not required	N/A
COMPETITIVE Contracts and Amendments (not included in categories below). \$20,000 or more (\$20,000 or more state funds)	State Funds * \$20,000 or more	OFM Review **	Work may start on or after the working day filed with OFM.
	Non-State Funds	Filing not required	N/A
COMPETITIVE Contracts and Amendments for: Management Consulting, Organizational Development, Marketing, Communications, Employee Training and Employee Recruiting \$20,000 or more (\$20,000 or more state funds)	State Funds * \$20,000 or more	OFM Approval	10-working day advance filing
	Non-State Funds	Filing not required	N/A
AMENDMENTS to competitive or sole source contracts that result in the contract amount being GREATER THAN 50% of the original contract value or that constitute a substantial change in the scope of work. Contract, when amended, equals \$5,000 or more (\$5,000 or more state funds if Sole Source and \$20,000 or more state funds if Competitive)	State Funds * Sole Source, \$5,000 or more Competitive, \$20,000 or more	OFM Approval	10-working day advance filing
	Non-State Funds	Filing not required	N/A

* State Funds for the purposes of filing means dollars that are: 1) appropriated by the Washington State Legislature, and/or 2) allotted by the agency. If a contract or amendment contains both state and non-state funds, it is filed only if the state-funded portion equals or exceeds: 1) \$5,000 for sole source and emergency contracts, or 2) \$20,000 for competitive contracts. Non-state funded contracts and amendments in these categories are reported to OFM.

** If contract amendments in these categories result in the contract exceeding 50% of the original contract amount or if they make a substantial change in the scope of work, the amendment is subject to OFM approval, rather than to review. Such amendments should be filed under the >50% amendment category, subject to fund source.

NOTES: 1) Subsection 15.30.10.e, lists certain types of amendments that are not subject to filing. 2) Subsection 15.30.90.a, lists categories of contracts that are not filed with OFM, but are submitted on an annual report to OFM at the end of each fiscal year.